

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 271 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

SURAT ELECTRICITY CO. LTD.

Appearance:

MR MIHIR JOSHI with MR M R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE KUNDAN SINGH

Date of decision: 13/04/98

ORAL JUDGEMENT [Per : Abichandani, J.]

The Income Tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this Court under Section 256 (1) of the Income Tax Act.

"Whether, on the facts and in the circumstances of the case, and in law, the ITAT, Ahmedabad was correct and justified in deleting an amount of Rs. 3,10,10,056/= being the statutory liability of Government duty, sales tax, etc. outstanding at the end of the previous year relevant to asstt. year 1987-88, which is expressly disallowed u/s. 43B of the I.T. Act disregarding the effect of provisions contained in explanation 2 to sec. 43B of the Act inserted by Finance Act 1987 with effect from 1.4.1988, and is prospective in application for and from asstt. year 1988-89 onwards ?"

The question referred to this Court now stands concluded by the decision of Hon'ble the Supreme Court in Allied Motors (P) Limited vs. C.I.T., reported in 224 ITR 677 in which the view expressed by this High Court in C.I.T vs. Chandulal Venechand reported in 209 ITR 7 was approved by the Supreme Court. In Chandulal Venechand's case, this Court while construing the provisions of Section 43-B had taken a view that the proviso to Section 43-B of the Act related back to the date when Section 43-B came into operation i.e., April 1, 1984. It was held that such liability would therefore be allowable as a deduction provided the assessee established that it was discharged by actual payment before the date applicable in his case for furnishing the return of income under Section 139 (1) of the Act in respect of relevant previous year in which the liability had been incurred.

In view of this settled legal position, the question referred to this Court is answered in the affirmative in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

Prakash*